

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----	x	
MARK E. FEINERSTEIN, Individually and On	)	
Behalf of All Others Similarly Situated	)	
	)	
Plaintiff,	)	Civil Action
	)	No. 03-12474-UA RCL
-against-	)	
	)	
MARSH & MCLENNAN COMPANIES, INC,	)	
et al.,	)	
	)	
Defendants.	)	
-----	)	
MARIA DAGOSTINO-GANNON, Individually and	)	
On Behalf of All Others Similarly Situated,	)	
	)	
Plaintiff,	)	Civil Action
	)	No. 03-12475-GAO ✓
-against-	)	
	)	
PUTNAM INVESTMENTS TRUST, et al.,	)	
	)	
Defendants.	)	
-----	x	

**REPLY MEMORANDUM IN FURTHER SUPPORT OF  
DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RULING  
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Putnam Investment Management, LLC, Putnam Investments Trust, Marsh & McLennan Companies, Inc., Putnam Investment Funds, and the various named Putnam mutual funds (collectively, the "Putnam Defendants") respectfully submit this reply memorandum in further support of their motion to stay proceedings in the above-captioned actions pending a ruling by the Judicial Panel on Multidistrict Litigation (the "MDL Panel" or the "Panel") on the

Putnam Defendants' petition to transfer a number of related cases to this District pursuant to 28 U.S.C. § 1407 for consolidated or coordinated pretrial proceedings.<sup>1</sup>

### ARGUMENT

#### **I. THE ACTIONS SHOULD BE STAYED PENDING RESOLUTION OF THE MDL PETITION**

##### **A. Plaintiffs Have No Private Right of Action**

The cornerstone of plaintiffs' Opposition is that their lawsuits purportedly are unique because they assert claims pursuant to Section 34(b) of the Investment Company Act of 1940 (the "ICA"). See Pls.' Opp. at 2, 6. Plaintiffs are wrong. Section 34(b) claims have been alleged in at least one other case pending against the Putnam Defendants: Dellavalle v. Putnam American Government Income Fund, et al., No. 03-CV-2192 (WWE) (D. Conn.). (A copy of the complaint is attached hereto as Exhibit A.) Moreover, the Dellavalle plaintiffs have agreed to stay all proceedings in that case pending the resolution of the Putnam Defendants' MDL petition. (A copy of the stipulation and order, which has been granted by the court, is attached hereto as Exhibit B.)

Even if plaintiffs' assertion were true, it does not support their opposition to a stay. The great weight of authority holds that there is no private right of action under Section 34 of the ICA. See, e.g., In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig., 2003 U.S. Dist. LEXIS 19177, at \*21-22 (S.D.N.Y. Oct. 29, 2003); White v. Heartland High-Yield Mun. Bond Fund, 237 F. Supp. 2d 982, 987-88 (E.D. Wisc. 2002); Dorchester Investors v. Peak Int'l Ltd.,

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<sup>1</sup> For the ease of the Court, the Putnam Defendants are responding as a group to plaintiffs' Motion, as captioned. In so doing, the Putnam Defendants do not concede that each of them has been served with the complaint in each of the actions included in plaintiffs' caption.

134 F. Supp. 2d 569, 581 (S.D.N.Y. 2001); Phillips v. Kapp, 87 F.R.D. 548 (S.D.N.Y. 1980).

While plaintiffs may be among the few who have asserted a facially invalid claim under Section 34, that is no reason to treat these cases differently from the many other related actions that are the subject of defendants' petition before the MDL Panel.

**B. Courts Routinely Grant Discovery Stays  
Pending Resolution of Potentially Dispositive Motions**

There also is no merit to plaintiffs' argument that they somehow would be entitled to pursue discovery during the pendency of defendants' motion to dismiss plaintiffs' facially defective claims under the ICA. See Pls. Opp. at 2-3, 6. Even in non-PSLRA cases, courts retain the discretion to stay, and routinely do stay, all merits discovery pending the resolution of potentially dispositive motions. See, e.g., LTX Corp. v. Daewoo Corp., 979 F. Supp. 51, 54 (D. Mass. 1997), aff'd mem., 141 F.3d 1149 (1st Cir. 1998); Stanley v. CF-VH Assocs., 956 F. Supp. 55, 56 (D. Mass. 1997); Cash Energy, Inc. v. Weiner, 768 F. Supp. 892, 896 (D. Mass. 1991).

Furthermore, contrary to plaintiffs' suggestion, there are no other derivative actions against Putnam in which discovery is underway. See Pls.' Opp. at 6. On December 15, 2003, the parties in a number of the related Putnam actions pending in this District filed a stipulation and proposed order agreeing to stay all proceedings pending a ruling by the MDL Panel. See Exhibit C. And on February 9, 2004, the parties in all but one of the other derivative Putnam actions in this District filed a stipulation and proposed order, attached hereto as Exhibit D, extending defendants' time to answer or otherwise respond to plaintiffs' complaints until the MDL Panel has ruled on defendants' petition.

**C. There Inevitably Will be Overlapping Discovery Because  
The Material Facts Alleged by Plaintiffs in *All* of the  
Related Putnam Cases Are Virtually Identical**

Plaintiffs do not, and cannot, deny that they have alleged precisely the same facts that have been pled in support of all claims that are the subject of defendants' petition before the MDL Panel. Thus, there is and can be no doubt that the discovery in all cases will be substantially overlapping, if not identical, in the unlikely event that plaintiffs' facially defective claims survive a motion to dismiss. Under the circumstances, and in the interest of efficient and orderly judicial administration of the more than 60 related Putnam cases, it makes no sense to permit plaintiffs to prosecute their two actions as if no other related litigation were pending.

**CONCLUSION**

For all of the foregoing reasons, plaintiffs' Opposition should be rejected and the above-captioned actions all should be stayed pending resolution of Putnam's MDL Petition.

Dated: February 12, 2004  
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Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, James R. Carroll, hereby certify that on February 12, 2004, I caused a true copy of the foregoing document to be served by first class mail, postage prepaid, upon counsel of record for each other party as indicated on the service list attached hereto.

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